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IN THE

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Supreme Court of the United States

OCTOBER TERM, 1992

BARCLAYS BANK PLC,*Petitioner,*

VS.

FRANCHISE TAX BOARD, An Agency of
the State of California,*Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE
THIRD APPELLATE DISTRICT

**BRIEF AMICUS CURIAE ON BEHALF OF
REUTERS LIMITED IN SUPPORT OF
PETITIONER BARCLAYS BANK PLC**

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INTEREST OF THE AMICUS CURIAE REUTERS

Reuters Limited, one of many subsidiaries of Reuters Holdings PLC, a United Kingdom company, supplies news and financial services worldwide. Reuters is currently a party to litigation with the New York State tax authorities challenging the constitutionality, under the Foreign Commerce Clause, of the very heavy compliance burden imposed upon Reuters by New York State's worldwide reporting requirements. That case is currently pending in the New York Court of Appeals, where

argument has been scheduled for September 8, 1993. *Reuters Limited v. Tax Appeals Tribunal*, 180 A.D. 2d 270, 584 N.Y.S. 2d 932 (3d Dept. 1992), *appeal granted*, Mo. No. 1285 (Feb. 11, 1993). Reuters submits this brief because the instant case presents the same issue under California law, and to underscore the importance of that issue to foreign multinational corporations that, as part of their worldwide operations, do business in the United States.

SUMMARY OF ARGUMENT

The imposition of a worldwide reporting requirement on multinational corporations by certain states has created a substantial burden on multinational corporations that do business in the United States as part of their worldwide operations. This burden directly conflicts with the international norm, which requires only that multinational corporations keep their books and records in accordance with *home country* requirements — not the requirements of other countries in which they happen to do business. It also runs afoul of decisions of this Court which recognize that discriminatory burdens on foreign commerce are subject to heightened scrutiny under the Foreign Commerce Clause. See e.g., *Kraft General Foods, Inc. v. Iowa Department of Revenue and Finance* ____ U.S. ___, 112 S.Ct. 2365 (1992); *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979).

ARGUMENT

Barclays does business in over forty non-U.S. jurisdictions. The trial court found that it would have cost over \$5 million to establish a system which would allow compliance with the California requirements and over \$2 million annually to maintain it. Reuters had business operations in over 80 countries in addition to the United States, and the uncontested evidence at trial was that the annual costs to comply with the record-keeping required by New York tax law would be considerably higher than the amount of tax claimed by the state for the years involved in the litigation. Costs of this magnitude must be given constitutional scrutiny. *Japan Line Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979).

Of the 80+ non-domiciliary countries in which Reuters had operations during the years involved in its case, only New York required Reuters to recast Reuters' worldwide accounts in accordance with its own tax-accounting rules. Neither the U.S. federal government nor any foreign country other than Reuters home jurisdiction, the United Kingdom, imposed such a requirement upon Reuters.

It is the international norm that a multinational company must conform its worldwide accounts to the standards prevailing in its home country. It violates this norm for a non-home country — let alone a political subdivision of a non-home country — to impose such a requirement on a multinational corporation. Were the practice to become general, it is not clear that Reuters, Barclays, and other widespread multinational corporations could remain in business.

The need for guidance in this area has become urgent. If the states are to be free to erect a substantial administrative obstacle to foreign firms that wish to do business within their borders, that should be made clear promptly so that multinational corporations can plan their operations accordingly. Conversely, if the states are not to have complete freedom to impose this discriminatory burden, a decision to that effect will remove the obstacle for foreign firms that desire to invest in certain U.S. states, but refrain from doing so because of the prospect that they will be required to create and maintain one or more new, onerous worldwide reporting systems in addition to the one they must maintain to conform to their home country's requirements.

¹ As a matter of style, Reuters does not use the possessive form — Reuters' — even where convention would use that form.

CONCLUSION

For these reasons, Reuters supports Barclays petition for certiorari in this case.

Respectfully submitted,

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